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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

April 28, 1993

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

RE: MM Docket No. 93-26  
Bowdon, Georgia

Dear Ms. Searcy:

Transmitted herewith on behalf of Terry C. Jenks are an original and six (6) copies of his Reply to Opposition to Motion to Enlarge Issues in the above-referenced proceeding.

Should any question arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH

*Patricia A. Mahoney*  
Patricia A. Mahoney  
Counsel for Terry C. Jenks

PAM/dlr

Enclosure

cc: The Honorable Richard L. Sippel\*  
James Shook, Esquire\*  
Audrey P. Rasmussen, Esquire

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Federal Communications Commission

representations in this proceeding, he "discovered" that assertions he made in his Motion to Modify were untrue, Gradick did not withdraw the Motion to Modify or correct the false allegations therein. Even after the Mass Media Bureau (and Jenks) opposed the Motion to Modify and clearly demonstrated that there was no merit to the Motion to Modify, Gradick did not withdraw the Motion to Modify. Instead, he continued to defend it, thereby requiring the Presiding Judge to consider the Motion to Modify on its "merits," which he did in Memorandum Opinion and Order, FCC 93M-190 (released April 27, 1993), denying the relief requested.

In his Motion to Enlarge, Jenks demonstrated: that Gradick has engaged in conduct abusive of the Commission's processes; that Gradick's conduct has burdened this proceeding with additional unnecessary filings and expense; and that his conduct has also injected serious allegations about Jenks and about individuals not parties to this proceeding into this proceeding in a way that does not advance any good faith, legitimate objective in this proceeding. Accordingly, Jenks requested that the issues in this proceeding be enlarged to include an abuse of process issue against Steven L. Gradick.

In response, Gradick's Opposition to Motion to Enlarge Issues (Opposition to Enlarge) is flippant and hypocritical. At the outset, Gradick has the audacity to attack Jenks' Motion to Enlarge because it did not include affidavits from anyone with personal knowledge of the facts, as required by Section 1.229(d)

of the Commission's Rules. Gradick's hypocrisy is amazing. His own Motion to Modify included allegations that there were two pending proceedings at the FCC that involved serious allegations against Terry C. Jenks. The two pending proceedings alleged were: (1) the Petition for Reconsideration of the Report and Order allotting Channel 288A to Bowdon, Georgia, in MM Docket No. 90-309, filed on September 19, 1991, by Design Media, Inc. (Design); and (2) the Request for Commission Inquiry filed on September 26, 1991, also by Design. With respect to the Request for Commission Inquiry, Gradick stated as follows:

"This Request for Inquiry was filed September 26, 1991 by Design Media, Inc. ("DMI"), and is presently pending before the Commission. The Request for Inquiry is premised upon the same conduct that was alleged in the Petition for Reconsideration."

Gradick Motion to Modify at 2 (emphasis added). Gradick also stated that the allegations contained in the Petition were serious and that, "[i]f the Commission acts favorably on the Petition for Reconsideration, it would have to make findings adverse to Mr. Jenks." Id. (emphasis added). Gradick also asserted that the above matters were "pending and that there have been no determinations concerning the sufficiency of the allegations or the legal efficacy of the arguments for reconsideration...." Id. at 3 (emphasis added). Yet Gradick submitted, as his sole support for the Motion, one pleading, the Design Petition for Reconsideration, an adversarial pleading



notice: the filing of the Motion to Modify; the wording of the Supplement thereto; the refusal or unwillingness of Gradick to withdraw the Motion to Modify; his failure to file copies of the Mass Media Bureau's letters and/or to disclose that the allegations against Terry C. Jenks in the Design Petition for Reconsideration and Request for Commission Inquiry had been investigated by the Mass Media Bureau and had been found to be "not substantiated"); and the failure to correct misstatements in the Motion to Modify. It is Gradick's own filings in this

Motion to Modify Issues (Supplement), Gradick knew that the allegations had been investigated and had been found to be unsubstantiated. Yet Gradick did not correct his misstatements, withdraw his Motion to Modify, or submit copies of the Bureau's determinations.

Thus, Gradick himself created the need for Jenks to protest, to supply the facts that Gradick deliberately withheld. If Jenks protested "too much," it was because Gradick made "much ado about nothing."

The essence of Gradick's response to the merits of the Jenks Motion to Enlarge is that there was and remains merit to his Motion to Modify because the Design Petition for Reconsideration is still pending. Gradick states that "[t]his fact has been recognized by Jenks." Gradick Opposition to Enlarge at 3, ¶5. However, what Jenks has "recognized" and demonstrated, and what the "Mass Media Bureau's Opposition to Motion to Modify Issues" (MMB Opposition) confirms, is that the Bureau's resolution of the pending Petition for Reconsideration will not re-examine the allegations against Terry Jenks. As the Bureau stated in its MMB Opposition:

"The Bureau submits Gradick's Motion is based on a faulty premise; namely, that some question exists with respect to the bona fides of Jenks' proposal to have Channel 288A allotted to Bowdon."

and

"With respect to Jenks...there is no pending proceeding whereby the alleged wrongdoing of Jenks will be adjudicated. Simply put, the

allocation proceeding is not designed to



The Commission has held that abuse of process is a "very broad concept" that:

"generally can be defined as the use of a Commission process, procedure, or rule to achieve a result which that process, procedure or rule was not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure, or rule."

Policies and Rules Relating to Broadcast Renewal Applicants, 3

FCC Rcd 5179, 5199 n. 2 (1988). It is readily apparent that Gradick used the procedures afforded by Section 1.229 of the Rules -- not to move to enlarge, delete, or modify the issues in this proceeding but for purposes unrelated to the rule. Gradick offered no proposed issues or modifications. Gradick did not even attempt to comply with the procedures set forth in Section 1.229. Gradick did not ask that the allegations he raised against Jenks be explored in an issue in this proceeding. Instead he used Section 1.229 as a vehicle to pollute this proceeding with suspicions about Jenks, to raise allegations recklessly against Jenks, and to require Jenks to spend time and resources rebutting the allegations. Gradick's actions have also required the Bureau and the Presiding Judge to expend time and resources addressing Gradick's Motion to Modify, Supplement, and Reply.

It is also an abuse of process and grossly improper to file pleadings without proper pre-filing investigation, thus requiring the parties against whom such pleadings are filed to respond to

allegations that are untrue and that the petitioner would have clearly known to be untrue if it had done proper pre-filing investigation. See Kinee v. Abraham Lincoln Federal Savings & Loan Ass'n. 365 F.Supp. 975, 982-83 (E.D. Pa. 1973).

Gradick has not provided any defense for his conduct. His Opposition to Enlarge does not include an affidavit or other response from Steven L. Gradick or any other person explaining or defending his conduct. Thus, the issue requested by Jenks in his Motion to Enlarge is clearly warranted.

WHEREFORE, for the foregoing reasons, it is respectfully requested that the issues in this proceeding be enlarged, as request by Terry C. Jenks in his above-referenced Motion to Enlarge Issues.

Respectfully submitted,

TERRY C. JENKS

By: Patricia A. Mahoney  
Patricia A. Mahoney  
Kathleen Victory  
His Attorneys

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April 28, 1993

**CERTIFICATE OF SERVICE**

I, Diane L. Roper, a secretary at the law firm of Fletcher, Heald & Hildreth, do hereby certify that true copies of the foregoing "Reply to Opposition to Motion to Enlarge Issues" were sent this 28th day of April, 1993, by first-class United States mail, postage prepaid, to the following:

\* The Honorable Richard L. Sippel  
Office of Administrative Law Judges  
Federal Communications Commission  
2000 L Street, N.W., Room 214  
Washington, D.C. 20554

\* James Shook, Esquire  
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\_\_\_\_\_  
Diane L. Roper

\*By Hand Delivery